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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/981,565	10/17/2001	Andrew C. Gilbert	01-1040	7706
63710 7590 01/15/2009 DEAN P. ALDERUCCI CANTOR FITZGERALD, L.P. 110 EAST 59TH STREET (6TH FLOOR) NEW YORK, NY 10022				
EXAMINER TRAN, HAI				
ART UNIT		PAPER NUMBER		
3694				
MAIL DATE		DELIVERY MODE		
01/15/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

09/981,565

Applicant(s)

GILBERT ET AL.

Examiner

HAI TRAN

Art Unit

3694

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 27 October 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 28-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 28-46 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)
- Paper No(s)/Mail Date: 10/20/08

- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date: _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

1. This is the **Final Office Action** in response to Amendment filed on October 27, 2008 for application, titled: "Systems and Methods for Bid/Offer Spread Trading".
2. Claims 28-31, 35 and 40 have been amended. New claims 41-46 have been added. Accordingly, claims 28-46 are pending in this application and have been examined.

Priority

3. This application claims the benefit of U.S. Provisional Patent Application No. 60/280,668, filed March 30, 2001.

Claim Rejections - 35 USC § 112

4. Applicant has clarified the rejections under the first and second paragraphs. Hence, the rejections are withdrawn.

Response to Arguments

5. Applicant's arguments with respect to claims 28-46 have been considered but are moot in view of the new ground(s) of rejection.
6. With respect to the argument of the "Examiner Note" (see page 9 of Remarks), the Examiner would like to clarify that he is citing the reference as nearly as practicable as stated in 37 C.F.R. § 1.104(c)(2).

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

8. Claims 28, 32-34, and 38-39 are rejected under 35 U.S.C. 102(e) as being anticipated by Fraser et al. (U.S. Patent No. 7,392,214) ("Fraser").

9. **With respect to Claim 28**, Fraser teaches a method comprising the steps of:

at a computer system, receiving a first order from a first party, in which the first order indicates a first spread with which to make a market for a financial instrument and a second spread at which to make a market for the financial instrument, and in which the first order includes an acceptance by the first party to participate in the market at the first spread and an acceptance by the first party to make a market at the second spread if the second party accepts the command (see Abstract, col. 11, lines 42-53, Figure 6/element 604);

at the computer system, receiving a second command from the second party, in which the second command comprise at least one of an acceptance of the first spread and an acceptance of the second spread (see col. 11, lines 42-48 of col. 12, Figure 6/element 620, 626);

if the second command comprises the acceptance of the first spread, requiring the first party to submit a third command indicating at least one of a buy and a sell of the financial instrument at a price reflecting the first spread (see col. 14, lines 43-60, Figure 8/element 808, 810, 812), and

if the second command comprises the acceptance of the second spread, requiring the second party to submit a third command indicating at least one of a buy and a sell of the financial instrument at a price reflecting the second spread (see col. 14, lines 43-60, Figure 8/element 808, 810, 812).

10. **With respect to Claim 32**, Fraser teaches that he method of claim 28, in which the first spread and the second spread are the same (see col. 11, lines 45-46, Figure 6/element 606-608).

11. **With respect to Claims 33 and 38**, Fraser teaches that the method of claim 28, in which the second command comprises the acceptance of the first spread and the method further comprises:

requiring the second party to submit a fourth command indicating that the first market for the financial instrument should be made with the first spread (see col. 46-53, col. 12, lines 2-3 "waits for an auction on the bid/offer at step 620").

12. **With respect to Claims 34 and 39**, Fraser teaches that the method of claim 33, in which the fourth command includes an indication of a price around which the first market should be made (see col. 14, lines 43-60, Figure 8/element 808, 810, 812).

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

14. Claims 29-31, 35-37, and 40-46 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fraser in view of Lutnick et al. (U.S. Patent No. 6,850,907) ("Lutnick").

15. **With respect to Claims 29 and 37**, Fraser teaches that the method of claim 28, wherein the second command comprises the acceptance of the first spread; and further comprising the step of blocking the first party from participating in a market if the third command indicating at least one of a buy and a sell of the financial instrument is not received from the first party within a limited period of time (see Lutnick, col. 13, lines 56-46 of col. 14 "blocked for a pre-set time interval").

Fraser teaches systems and methods for trading including the bid/offer spread trading feature, but does not explicitly disclose the block feature. Lutnick teaches a data processing system for implementing auction-based trading including the block feature (see Lutnick, col. 14, lines 36-46, Figure 7/element 830). It would have been obviously

to one of ordinary skill in the art at the time of the invention to modify Fraser's invention to include the block feature to offer an improved system to the customers.

16. **With respect to Claims 30 and 35**, Fraser teaches that the method of claim 29, wherein the second command comprises the acceptance of the first spread; and

requiring the first party to submit the third command includes charging a fee to the first party if the third command indicating at least one of a buy and a sell of the financial instrument through the first market is not received from the first party within a limited period of time (see Lutnick, col. 11, lines 66-7 of col. 12 "There is a business purpose for this arrangement. By allowing participants are rewarded with active bids-offers the first chance for the new entry"). It would have been obviously to one of ordinary skill in the art at the time of the invention to modify Fraser's invention to include the fee charging feature to offer an improved system to the customers.

17. **With respect to Claims 31 and 36**, Fraser teaches that the method of claim 28, wherein the second command comprises the acceptance of the first spread; and

further comprising the step of automatically entering a default trading command from the first party if the third command indicating at least one of a buy and a sell of the financial instrument item through the first market is not received from the first party within a limited period of time (see Lutnick, col. 11, lines 55-7 of col. 12). It would have been obviously to one of ordinary skill in the art at the time of the invention to modify

Fraser's invention to include the auto default feature to offer an improved system to the customers.

18. **With respect to Claims 40-46**, these computer readable medium claims correspond to claims 28-39 and have the same steps and limitations. Hence, they are rejected under the same rationale provided in claims 28-39.

Conclusion

19. Claims 28-46 are rejected.

20. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

21. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

22. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HAI TRAN whose telephone number is (571)272-7364. The examiner can normally be reached on M-F, 9-4 PM.
23. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James P. Trammell can be reached on (571) 272-6712. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
24. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/H. T./
Examiner, Art Unit 3694

/James P Trammell/
Supervisory Patent Examiner, Art Unit 3694